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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**
16

17 ENEIDA AMPARAN, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 PLAZA HOME MORTGAGE, INC., and
22 DOES 1 through 10 inclusive,

23 Defendants.

) **CASE NO. C-07-04498 - JF**

) Judge: Hon. Jeremy Fogel
Crm: 3

) **CLASS ACTION**

) **STIPULATED PROTECTIVE ORDER**

24
25) Complaint Filed: August 29, 2007
26) Trial Date: Not set yet.
27
28)

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby
5 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords extends only to the limited information or items that are
8 entitled under the applicable legal principles to treatment as confidential. The parties further
9 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
11 that must be followed and reflects the standards that will be applied when a party seeks permission from
12 the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or
17 manner generated, stored, or maintained (including, among other things, testimony, transcripts, or
18 tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

19 2.3 “Confidential” information or items: For the purposes of this Order, “Confidential”
20 information or items means:

21 (a) Information that constitutes a trade secret in accordance with Cal. Civil Code §
22 3426.1;

23 (b) Non-public communications with regulators or other governmental bodies that are
24 intended to be kept confidential and/or are protected from disclosure by statute or regulation;

25 (c) Information, materials, and/or other documents reflecting non-public business or
26 financial strategies, and/or confidential competitive information which, if disclosed, would result in
27 prejudice or harm to the disclosing party; and

28 ///

(d) Any other information that qualifies for protection under standards developed under F.R.Civ.P. 26(c), including but not limited to, information (other than Private Consumer Information as defined below) subject to federal or state privacy rights.

2.4 Private Consumer Information: Borrower-specific and/or credit applicant-specific information, including private consumer information that contains identifying, contact or private financial information provided by a consumer to a financial institution, resulting from any transaction with the consumer or any service performed for the consumer, or otherwise obtained by the financial institution, including any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information, including any “nonpublic personal information” such as identified by the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Private Consumer Information.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Private Consumer Information.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or a current employee of a

1 competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a
2 Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained
3 in connection with this litigation.

4 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
5 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
6 retrieving data in any form or medium; etc.) to a Party and their employees and subcontractors.

7 **3. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only Protected Material (as
9 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
10 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel
11 to or in court or in other settings that might reveal Protected Material.

12 **4. DURATION**

13 Even after the termination of this litigation, the confidentiality obligations imposed by this Order
14 shall remain in effect until the Designating Party that produced the Protected Material at issue agrees
15 otherwise in writing or a court order otherwise directs.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
18 non-party that designates information or items for protection under this Order must take care to limit any
19 such designation to specific material that qualifies under the appropriate standards. A Designating Party
20 must take reasonable care to designate for protection only those parts of material, documents, items, or
21 oral or written communications that the Party reasonably believes to qualify for protection – so that
22 other portions of the material, documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
24 designations are prohibited. Designations that are shown to be clearly unjustified, or that have been
25 made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process,
26 or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to
27 sanctions. If it comes to a Party's or a non-party's attention that information or items that it designated
28 for protection do not qualify for protection at all, or do not qualify for the level of protection initially

1 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
2 mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
4 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
5 qualifies for protection under this Order must be clearly so designated before the material is disclosed or
6 produced. Nothing in this Order concerning designation for protection, however, shall be interpreted as
7 controlling the form of production of any material by any Party or non-Party.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (apart from transcripts of depositions or other
10 pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
11 “PRIVATE CONSUMER INFORMATION” at the top or bottom of each page that contains protected
12 material. If only a portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins) and must specify, for each portion, the level of protection being asserted (either
15 “CONFIDENTIAL” or “PRIVATE CONSUMER INFORMATION”).

16 A Party or non-party that makes original documents or materials available for inspection
17 need not designate them for protection until after the inspecting Party has indicated which material it
18 would like copied and produced. During the inspection and before the designation, all of the material
19 made available for inspection shall be deemed Protected Material. After the inspecting Party has
20 identified the documents it wants copied and produced, the Producing Party must determine which
21 documents, or portions thereof, qualify for protection under this Order, then, before producing the
22 specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
23 “PRIVATE CONSUMER INFORMATION”) at the top or bottom of each page that contains Protected
24 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing
25 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
26 margins) and must specify, for each portion, the level of protection being asserted (either
27 “CONFIDENTIAL” or “PRIVATE CONSUMER INFORMATION”).

28 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the

1 Party or non-party offering or sponsoring the testimony take reasonable steps to identify on the record,
2 before the close of the deposition, hearing, or other proceeding, the specific identity or the scope of all
3 Protected Materials in such testimony, and further specify any portions of the testimony that qualify as
4 “CONFIDENTIAL” or “PRIVATE CONSUMER INFORMATION.” When it is impractical to identify
5 separately each portion of testimony that is entitled to protection, and when it appears that substantial
6 portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or
7 gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right
8 to have up to 20 days to identify the specific portions of the testimony as to which protection is sought
9 and to specify the level of protection being asserted (“CONFIDENTIAL” or “PRIVATE CONSUMER
10 INFORMATION”). Only those portions of the testimony that are appropriately designated for
11 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.
12 Transcript pages containing Protected Material must be separately bound by the court reporter, who
13 must affix to the top or bottom of each such page the legend “CONFIDENTIAL” or “PRIVATE
14 CONSUMER INFORMATION,” as instructed by the Party or nonparty offering or sponsoring the
15 witness or presenting the testimony.

16 (c) for information produced in some form other than documentary, and for any other
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
18 containers in which the information or item is stored the legend “CONFIDENTIAL” or “PRIVATE
19 CONSUMER INFORMATION.” If only portions of the information or item warrant protection, the
20 Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they
21 qualify as “Confidential” or as “Private Consumer Information.”

22 5.3 Inadvertent Failures to Designate. If any Confidential information or items or Private
23 Consumer Information is inadvertently provided to a discovering party without being marked
24 appropriately as Protected Material in accordance with this Order, the producing party may thereafter
25 designate such material(s) as Confidential or Private Consumer Information and the initial failure to so
26 mark the material shall not be deemed a waiver of its confidentiality.

27 If a party inadvertently produces information that it later discovers, or in good faith later asserts,
28 to be subject to any legal privileges, including but not limited to, the attorney-client privilege or work

1 product doctrine, or is otherwise protected from disclosure, the production of that information will not
2 be presumed to constitute a waiver of any applicable privileges or other protections. In these
3 circumstances, the producing party must immediately notify all parties in writing of the inadvertent
4 production and the basis for the claim of privilege or other protection from production, and request in
5 writing the return or confirmed destruction of the privileged or protected information. Within five days
6 of receiving such notification, and in compliance with the receiving parties' ethical obligations under the
7 law, all receiving parties who have not already reviewed such materials or who have reviewed the
8 materials but do not contest the applicability of the privilege asserted must return or confirm destruction
9 of all such materials, including copies and/or summaries thereof. However, should a receiving party
10 contest the applicability of a privilege asserted with respect to an inadvertently produced document
11 which the receiving party has already reviewed, the receiving party may temporarily retain the
12 document or documents at issue, segregated and not further copied or disseminated, for the sole purpose
13 of contesting the applicability of the privilege asserted. Within two (2) business days of the issuance of
14 a court order deeming the contested documents at issue privileged, or protected from production, the
15 receiving party must return or confirm destruction of all such materials, including copies and/or
16 summaries thereof.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's designation of
19 Protected Material is necessary to avoid foreseeable substantial unfairness, unnecessary economic
20 burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to
21 challenge a designation of Protected Material by electing not to mount a challenge promptly after the
22 original designation is disclosed.

23 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
24 designation of Protected Material must do so in good faith and must begin the process by conferring
25 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
26 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
27 designation of Protected Material was not proper and must give the Designating Party an opportunity to
28 review the Protected Material at issue, to reconsider the circumstances, and, if no change in designation

1 is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
 2 stage of the challenge process only if it has engaged in this meet and confer process first.

3 6.3 Judicial Intervention. A Party that elects to press a challenge to a designation of
 4 Protected Material after considering the justification offered by the Designating Party may file and serve
 5 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
 6 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
 7 must be accompanied by a competent declaration that affirms that the movant has complied with the
 8 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the
 9 justification for the designation that was given by the Designating Party in the meet and confer dialogue.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 11 Until the court rules on the challenge, all parties shall continue to afford the material in question the
 12 level of protection to which it is entitled under the Producing Party's designation.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 15 produced by another Party or by a non-party in connection with this case only for prosecuting,
 16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
 17 categories of persons and under the conditions described in this Order. When the litigation has been
 18 terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
 19 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location
 20 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
 22 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 23 information or item designated CONFIDENTIAL only to:

24 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees
 25 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
 26 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel) of the Receiving
 28 Party to whom disclosure is reasonably necessary for this litigation and who have signed the

1 "Agreement to Be Bound by Protective Order" (Exhibit A);

2 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
3 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
4 Order" (Exhibit A);

5 (d) the Court and its personnel;

6 (e) court reporters, their staffs, and professional vendors to whom disclosure is
7 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective
8 Order" (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
10 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
12 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
13 this Stipulated Protective Order.

14 (g) the author of the document or the original source of the information.

15 7.3 Use of "Private Consumer Information" All documents or materials designated as
16 Private Consumer Information on the ground that said documents or materials pertain to
17 borrower-specific and/or credit applicant-specific information, including private consumer information
18 that contains identifying, contact or private financial information provided by a consumer to a financial
19 institution, resulting from any transaction with the consumer or any service performed for the consumer,
20 or otherwise obtained by the financial institution, including any list, description, or other grouping of
21 consumers (and publicly available information pertaining to them) that is derived using any nonpublic
22 personal information, including any "nonpublic personal information" such as identified by the
23 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., may only be used for the purposes of this litigation,
24 and shall not be disclosed or disseminated to the general public or used for any commercial, business or
25 competitive purpose, without the consumers informed written consent.

26 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
27 OTHER LITIGATION.**

28 If a Receiving Party is served with a subpoena or an order issued in other litigation that would

1 compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or
2 "PRIVATE CONSUMER INFORMATION," the Receiving Party must so notify the Designating Party,
3 in writing (by fax, if possible) immediately and in no event more than three court days after receiving
4 the subpoena or order. Such notification must include a copy of the subpoena or court order.

5 The Receiving Party also must immediately inform in writing the Party who caused the subpoena
6 or order to issue in the other litigation that some or all the material covered by the subpoena or order is
7 the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this
8 Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to
9 issue.

10 The purpose of imposing these duties is to alert the interested parties to the existence of this
11 Protective Order and to afford the Designating Party in this case a reasonable opportunity to try to
12 protect its competitive or confidentiality interests, or its rights or obligations, in the court from which
13 the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking
14 protection in that court of its confidential material – and nothing in these provisions should be construed
15 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
16 court.

17 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
19 to any person or in any circumstance not authorized under this Stipulated Protective Order, the
20 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
21 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person
22 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
23 such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
24 hereto as Exhibit A.

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1 **10. FILING PROTECTED MATERIAL.**

2 Without written permission from the Designating Party or a court order secured after appropriate
3 notice to all interested persons, a Party may not file in the public record in this action any Protected
4 Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local
5 Rule 79-5.

6 **11. FINAL DISPOSITION.**

7 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the
8 final termination of this action, each Receiving Party must return all Protected Material to the Producing
9 Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
10 summaries or any other form of reproducing or capturing any of the Protected Material. With permission
11 in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected
12 Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving
13 Party must submit a written certification to the Producing Party (and, if not the same person or entity, to
14 the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the
15 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
16 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any
17 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
18 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
19 product, even if such materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
21 (DURATION), above.

22 **12. MISCELLANEOUS**

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
24 modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
26 Party waives any right it otherwise would have to object to disclosing or producing any information or
27 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
28 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: July 3, 2008

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24 DATED: July 3, 2008

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25 By: /s/ John D. Alessio
26 John D. Alessio

27 Attorneys for Defendant PLAZA HOME
28 MORTGAGE, INC.

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: July 7, 2008



Hon. Richard Seeborg
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of Eneida Amparan v. Plaza Home Mortgage, Inc., Case No. C-07-04498-JF. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]